

KENJI M. PRICE #10523
United States Attorney
District of Hawaii

HARRY YEE #3790
Assistant U.S. Attorney
Room 6-100, PJKK Federal Bldg.
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-3752
Email: Harry.Yee@usdoj.gov

JOSEPH H. HUNT
Assistant Attorney General

WILLIAM C. PEACHEY
Director

GLENN M. GIRHARRY
Assistant Director

SAMUEL P. GO NYS BAR #4234852
Senior Litigation Counsel
United States Department of Justice
Office of Immigration Litigation, District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 353-9923
E-mail: samuel.go@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

YA-WEN HSIAO,) Civil No. 1:18-cv-00502-JAO-KJM
)
Plaintiff,) DEFENDANT'S MOTION TO DISMISS;
) MEMORANDUM IN SUPPORT;
v.) CERTIFICATE OF SERVICE
)
ALEXANDER ACOSTA,) ORAL ARGUMENT REQUESTED
Secretary of Labor,)
)
<u>Defendant.</u>)

DEFENDANT'S MOTION TO DISMISS

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant Alexander Acosta, Secretary of Labor, through undersigned counsel, Court hereby moves this court for an order of dismissal in favor of Defendant.

Under Fed. R. Civ. P. 12(b)(1), this court lacks subject matter jurisdiction over Plaintiff's claims, as Plaintiff's Complaint fails to satisfy the requirements for standing in her challenge of DOL's denial of the Employer's Application. Plaintiff lacks constitutional standing to challenge the denial of the Employer's Application because the application was filed by, and belongs to, the Employer. Plaintiff is not the applicant, but merely the named beneficiary on the Application. Plaintiff also lacks constitutional standing because she has not sufficiently pled an injury-in-fact that is fairly traceable to Defendant's challenged conduct that could be redressable by a favorable decision. Plaintiff also lacks prudential standing, as she does not fall in the "zone of interest" contemplated by the statute being invoked. Finally, Plaintiff's claim that DOL has violated its FOIA regulations is moot. For these reasons, the Court should find that Plaintiff lacks standing to bring her complaint and dismiss the case in its entirety.

This motion is based upon the pleadings herein, the record to date, the memorandum in support, and attachments hereto and made a part hereof.

Dated: March 4, 2019

Respectfully submitted,

KENJI M. PRICE
United States Attorney
District of Hawaii

By: /s/ Harry Yee
HARRY YEE
Assistant U.S. Attorney

JOSEPH H. HUNT
Assistant Attorney General

WILLIAM C. PEACHEY
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Assistant Director

By: /s/ Samuel P. Go
SAMUEL P. GO
NYS Bar No. 4234852
Senior Litigation Counsel
United States Department of
Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin
Station
Washington, D.C. 20044
Telephone: (202) 353-9923
E-mail: Samuel.go@usdoj.gov

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on March 4, 2019 by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served by First-Class Mail:

Ya-Wen Hsiao
1141 Hoolai St., Apt. 201
Honolulu, HI 96814

March 4, 2019

/s/ Samuel P. Go
Samuel P. Go
Senior Litigation Counsel
District Court Section
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 353-9923
Fax: (202) 305-7000